

ASSEMBLY, No. 4049

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Revises “Administrative Procedure Act” concerning socio-economic impact statements for proposed rule-making.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning rule-making and amending and supplementing
2 P.L.1968, c.410.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
8 read as follows:

9 4. (a) Prior to the adoption, amendment, or repeal of any rule,
10 except as may be otherwise provided, the agency shall:

11 (1) Give at least 30 days' notice of its intended action. The
12 notice shall include a statement of either the terms or substance of
13 the intended action or a description of the subjects and issues
14 involved, and the time when, the place where, and the manner in
15 which interested persons may present their views thereon. The
16 notice shall be mailed to all persons who have made timely requests
17 of the agency for advance notice of its rule-making proceedings
18 and, in addition to any other public notice required by law, shall be
19 published in the New Jersey Register. Notice shall also be
20 distributed to the news media maintaining a press office to cover
21 the State House Complex, and made available for public viewing
22 through publication on the agency's Internet website. Each agency
23 shall additionally publicize the intended action and shall adopt rules
24 to prescribe the manner in which it will do so. In order to inform
25 those persons most likely to be affected by or interested in the
26 intended action, each agency shall distribute notice of its intended
27 action to interested persons, and shall publicize the same, through
28 the use of an electronic mailing list or similar type of subscription-
29 based e-mail service. Additional publicity methods that may be
30 employed include publication of the notice in newspapers of general
31 circulation or in trade, industry, governmental or professional
32 publications, distribution of press releases to the news media and
33 posting of notices in appropriate locations, including the agency's
34 Internet website. The rules shall prescribe the circumstances under
35 which each additional method shall be employed;

36 (2) Prepare for public distribution at the time the notice appears
37 in the Register, and make available for public viewing through
38 publication on the agency's Internet website, a statement setting
39 forth a summary of the proposed rule, as well as a clear and concise
40 explanation of the purpose and effect of the rule, the specific legal
41 authority under which its adoption is authorized, a description of
42 the expected socio-economic impact of the rule, as provided in
43 section 2 of P.L. , c. (C.) (pending before the Legislature as
44 this bill), a regulatory flexibility analysis, or the statement of
45 finding that a regulatory flexibility analysis is not required, as

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs
2 impact statement which shall include an assessment of the number
3 of jobs to be generated or lost if the proposed rule takes effect, an
4 agriculture industry impact statement as provided in section 7 of
5 P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact
6 statement, a smart growth development impact statement, as
7 provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a
8 racial and ethnic community criminal justice and public safety
9 impact statement as required in section 3 of P.L.2017, c.286
10 (C.2C:48B-2);

11 (3) Afford all interested persons a reasonable opportunity to
12 submit data, views, comments, or arguments, orally or in writing.
13 The agency shall consider fully all written and oral submissions
14 respecting the proposed rule, including any written submissions that
15 are received by the agency through its e-mail systems or electronic
16 mailing lists. If within 30 days of the publication of the proposed
17 rule sufficient public interest is demonstrated in an extension of the
18 time for submissions, the agency shall provide an additional 30-day
19 period for the receipt of submissions by interested parties. The
20 agency shall not adopt the proposed rule until after the end of that
21 30-day extension.

22 The agency shall conduct a public hearing on the proposed rule
23 at the request of a committee of the Legislature, or a governmental
24 agency or subdivision, or if sufficient public interest is shown,
25 provided such request is made to the agency within 30 days
26 following publication of the proposed rule in the Register. The
27 agency shall provide at least 15 days' notice of such hearing, shall
28 publish such hearing notice on its Internet website, and shall
29 conduct the hearing in accordance with the provisions of subsection
30 (g) of this section.

31 The head of each agency shall adopt as part of its rules of
32 practice adopted pursuant to section 3 of P.L.1968, c.410
33 (C.52:14B-3) definite standards of what constitutes sufficient public
34 interest for conducting a public hearing and for granting an
35 extension pursuant to this paragraph; and

36 (4) Prepare for public distribution, and make available for public
37 viewing through publication on the agency's Internet website, a
38 report listing all parties offering written or oral submissions
39 concerning the rule, summarizing the content of the submissions
40 and providing the agency's response to the data, views, comments,
41 and arguments contained in the submissions.

42 (b) A rule prescribing the organization of an agency may be
43 adopted at any time without prior notice or hearing. Such rules
44 shall be effective upon filing in accordance with section 5 of
45 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by
46 the agency.

47 (c) If an agency finds that an imminent peril to the public
48 health, safety, or welfare requires adoption of a rule upon fewer

1 than 30 days' notice and states in writing its reasons for that finding,
2 and the Governor concurs in writing that an imminent peril exists,
3 the agency may proceed to adopt the rule without prior notice or
4 hearing, or upon any abbreviated notice and hearing that it finds
5 practicable. The agency shall publish, on its Internet website, a
6 summary of any rule adopted pursuant to this subsection, and the
7 statement of reasons for the agency's finding that an imminent peril
8 exists. Any rule adopted pursuant to this subsection shall be
9 effective for a period of not more than 60 days, unless each house
10 of the Legislature passes a resolution concurring in its extension for
11 a period of not more than 60 additional days. The rule shall not be
12 effective for more than 120 days unless repromulgated in
13 accordance with normal rule-making procedures.

14 (d) No rule hereafter adopted is valid unless adopted in
15 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).
16 A proceeding to contest any rule on the ground of noncompliance
17 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et
18 seq.) shall be commenced within one year from the effective date of
19 the rule.

20 (e) An agency may file a notice of intent with respect to a
21 proposed rule-making proceeding with the Office of Administrative
22 Law, for publication in the New Jersey Register at any time prior to
23 the formal notice of action required in subsection (a) of this section.
24 The notice shall be for the purpose of eliciting the views of
25 interested parties on an action prior to the filing of a formal rule
26 proposal. Such notice shall be distributed to interested persons
27 through the use of an electronic mailing list or similar type of
28 subscription-based e-mail service, and made available for public
29 viewing through publication on the agency's Internet website. The
30 agency shall afford all interested persons a reasonable opportunity
31 to submit data, views, comments, or arguments, orally or in writing,
32 on the proposed action, and shall fully consider all written and oral
33 submissions, including any written submissions received by the
34 agency through its e-mail systems or electronic mailing lists. An
35 agency may use informal conferences and consultations as means of
36 obtaining the viewpoints and advice of interested persons with
37 respect to contemplated rule-making. An agency may also appoint
38 committees of experts or interested persons or representatives of the
39 general public to advise it with respect to any contemplated rule-
40 making.

41 (f) An interested person may petition an agency to adopt a new
42 rule, or amend or repeal any existing rule. Such petition may be
43 submitted to the agency through mail, e-mail, electronic mailing
44 list, or through any other means. Each agency shall prescribe by
45 rule the form for the petition and the procedure for the
46 consideration and disposition of the petition. The petition shall
47 state clearly and concisely:

1 (1) The substance or nature of the rule-making which is
2 requested;

3 (2) The reasons for the request and the petitioner's interest in the
4 request;

5 (3) References to the authority of the agency to take the
6 requested action.

7 The petitioner may provide the text of the proposed new rule,
8 amended rule or repealed rule.

9 Within 60 days following receipt by an agency of any such
10 petition, the agency shall either: (i) deny the petition, giving a
11 written statement of its reasons; (ii) grant the petition and initiate a
12 rule-making proceeding within 90 days of granting the petition; or
13 (iii) refer the matter for further deliberations which shall be
14 concluded within 90 days of referring the matter for further
15 deliberations. Upon conclusion of such further deliberations, the
16 agency shall either deny the petition and provide a written statement
17 of its reasons or grant the petition and initiate a rule-making
18 proceeding within 90 days. Upon the receipt of the petition, the
19 agency shall file a notice stating the name of the petitioner and the
20 nature of the request with the Office of Administrative Law for
21 publication in the New Jersey Register. Notice of formal agency
22 action on such petition shall also be filed with the Office of
23 Administrative Law for publication in the Register, and shall be
24 made available for public viewing through publication on the
25 agency's Internet website.

26 If an agency fails to act in accordance with the time frame set
27 forth in the preceding paragraph, upon written request by the
28 petitioner, the Director of the Office of Administrative Law shall
29 order a public hearing on the rule-making petition and shall provide
30 the agency with a notice of the director's intent to hold the public
31 hearing if the agency does not. If the agency does not provide
32 notice of a hearing within 15 days of the director's notice, the
33 director shall schedule, and provide the public with a notice of, that
34 hearing at least 15 days prior thereto. Hearing notice shall also be
35 made available for public viewing through publication on the
36 agency's Internet website. If the public hearing is held by the
37 Office of Administrative Law, it shall be conducted by an
38 administrative law judge, a person on assignment from another
39 agency, a person from the Office of Administrative Law assigned
40 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
41 5), or an independent contractor assigned by the director. The
42 petitioner and the agency shall participate in the public hearing and
43 shall present a summary of their positions on the petition, a
44 summary of the factual information on which their positions on the
45 petition are based and shall respond to questions posed by any
46 interested party. The hearing procedure shall otherwise be
47 consistent with the requirements for the conduct of a public hearing
48 as prescribed in subsection (g) of section 4 of P.L.1968, c.410

1 (C.52:14B-4), except that the person assigned to conduct the
2 hearing shall make a report summarizing the factual record
3 presented and the arguments for and against proceeding with a rule
4 proposal based upon the petition. This report shall be filed with the
5 agency and delivered or mailed to the petitioner. A copy of the
6 report shall be filed with the Legislature along with the petition for
7 rule-making.

8 (g) All public hearings shall be conducted by a hearing officer,
9 who may be an official of the agency, a member of its staff, a
10 person on assignment from another agency, a person from the
11 Office of Administrative Law assigned pursuant to subsection o. of
12 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
13 contractor. The hearing officer shall have the responsibility to
14 make recommendations to the agency regarding the adoption,
15 amendment or repeal of a rule. These recommendations shall be
16 made public. At the beginning of each hearing, or series of
17 hearings, the agency, if it has made a proposal, shall present a
18 summary of the factual information on which its proposal is based,
19 and shall respond to questions posed by any interested party.
20 Hearings shall be conducted at such times and in locations which
21 shall afford interested parties the opportunity to attend. A verbatim
22 record of each hearing shall be maintained, and copies of the record
23 shall be available to the public at no more than the actual cost,
24 which shall be that of the agency where the petition for rule-making
25 originated.

26 (cf: P.L.2017, c.286, s.4)

27
28 2. (New section) a. In proposing a rule for adoption, the
29 agency involved shall issue a description of the expected socio-
30 economic impact of the rule prepared by a representative of the
31 segment of the public proposed to be regulated by the rule, which
32 shall be included in the notice of a proposed rule as required by
33 subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). This
34 description shall include the anticipated impact and estimated cost
35 of the proposed rule on the affected segment of the population to be
36 regulated by the rule and the effect of the rule on job creation and
37 job retention by the affected regulated community.

38 b. (1) Prior to the submittal of the proposed rule to the Office
39 of Administrative Law for publication in the New Jersey Register,
40 an agency shall contact one representative of the segment of the
41 public proposed to be regulated by the rule, provide that
42 representative with a written copy of the proposed rule, and provide
43 the opportunity for the representative to prepare the description for
44 the socio-economic impact of the proposed rule as provided in
45 subsection a. of this section. The agency shall select this
46 representative based upon a list of interested persons associated
47 with the segment of the public proposed to be regulated by the rule

1 who have provided substantial written submissions to the agency on
2 previous proposed rules on similar subject matter.

3 (2) Upon receipt of the description of the socio-economic
4 impact of the proposed rule, the agency shall include, in full, that
5 description in the proposed rule submitted to the Office of
6 Administrative Law for publication in the New Jersey Register.

7 The Office of Administrative Law may require payment by the
8 representative preparing the description of the socio-economic
9 impact of the proposed rule sufficient to cover the proportional
10 costs of printing and distributing the New Jersey Register
11 attributable to that description.

12 c. This subsection shall not apply to any proposed rule which
13 the agency finds would impose an insignificant impact, either
14 because the scope of the regulation is minimal, or there is an
15 extreme unlikelihood that the regulation would evoke a socio-
16 economic impact. The agency's finding and an indication of the
17 basis for its finding shall be included in the notice of a proposed
18 rule as required by subsection (a) of section 4 of P.L.1968, c.410
19 (C.52:14B-4).

20
21 3. This act shall take effect immediately.
22
23

24 STATEMENT

25
26 This bill revises the "Administrative Procedure Act," P.L.1968,
27 c.410 (C.52:14B-1 et seq.) (APA) to add specific requirements for
28 the socio-economic impact statement required as part of the rule-
29 making process. The APA, enacted in 1968, establishes the
30 procedures that agencies in the Executive branch of State
31 government must follow when exercising their authority to adopt
32 rules and regulations. This bill expands the requirements for the
33 description of the expected socio-economic impact of a proposed
34 rule-making by requiring State agencies to obtain, for inclusion in
35 the publication of the rule proposal in the New Jersey Register, a
36 socio-economic impact description of the proposed rule from the
37 regulated community.

38 Under this bill, a State agency, prior to submitting a proposed
39 rule to the Office of Administrative Law (OAL) for publication in
40 the New Jersey Register, would be required to contact one
41 representative of the segment of the public proposed to be regulated
42 by the rule (i.e., the regulated community), provide that
43 representative with a written copy of the proposed rule, and provide
44 the opportunity for the representative to prepare a description of the
45 socio-economic impact of the proposed rule. The agency would
46 select the regulated community representative from among those
47 interested persons associated with the segment of the public
48 proposed to be regulated by the rule who have provided substantial

1 written submissions to the agency on previous rules proposals on
2 similar subject matter. Upon receipt of the socio-economic impact
3 description of the proposed rule, the agency would be required to
4 include, in full, that description in the proposed rule submitted to
5 the OAL for publication in the New Jersey Register. The bill
6 provides that the OAL may require payment by the regulated
7 community representative preparing the socio-economic impact
8 description in an amount sufficient to cover the proportional costs
9 of printing and distributing the New Jersey Register attributable to
10 the publication of that description.

11 An agency would not be required to include a socio-economic
12 impact description prepared by a representative of the regulated
13 community if the agency finds that the proposed rule would impose
14 an insignificant impact, either because the scope of the regulation is
15 minimal, or there is an extreme unlikelihood that the regulation
16 would evoke a socio-economic impact. In this case, the agency's
17 finding and an indication of the basis for its finding are required to
18 be included in the notice of a proposed rule published by OAL.